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January 6, 2017

Robert deV. Frierson
Secretary
Board of Governors of the
Federal Reserve System
20th Street & Constitution Ave., NW
Washington DC 20551
Docket No. R-1549

Legislative & Regulatory Activities
Division
Comptroller of the Currency
400 7th Street, SW
Washington DC 20219
Docket ID OCC-2016-0005

Barry F. Mardock
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Dr
McLean VA 22102
RIN 3052-AD11

Robert E. Feldman, Executive
Secretary
ATTN: Comments/Legal ESS
Federal Deposit Insurance
Corporation
550 17th Street NW
Washington DC 20429
RIN 3064-AE50

Gerard Poliquin
Secretary of the Board
National Credit Union
Administration
1775 Duke Street
Alexandria VA 22314
RIN 3133-AE64

RE: Loans in Areas Having Special Flood Hazards—Private Flood Insurance

To Whom It May Concern:

On behalf of Community Associations Institute (CAI), I am pleased to submit the following comments supporting the joint proposed regulation concerning the acceptance of private flood insurance to fulfill mandatory flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.

CAI is the only national organization dedicated to fostering competent, well-governed community associations (condominiums, cooperatives and planned communities) that are home to approximately one in every five American households. For more than 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's 34,000 members include community association volunteer leaders, community managers, community management firms, and other professionals and companies that provide products and services to community associations.

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Community Associations and Flood Risk Management

Flooding affects each state and territory of the United States and cumulatively is the costliest of natural disasters. CAI members acknowledge and understand the importance of insuring community association common elements against flood loss as well as the need for individual association homeowners to purchase flood insurance. In addition to purchasing flood insurance, CAI members believe communities and homeowners should strive to reduce the risk of flooding and improve the overall resiliency of communities where practicable.

Community associations and CAI members have a strong interest in the availability and affordability of flood insurance, effective floodplain management, and flood risk mitigation. These interests emanate from community association ownership and operation of roads, bridges, culverts, canals, wastewater facilities, and other critical community infrastructure.

As housing development models have evolved over the past half-century, local officials have increasingly required that community associations provide services and operate infrastructure that once were the exclusive province of local government. This evolution of community services presents unique insurance and risk mitigation challenges and the opportunity to seek out private flood insurance coverage may assist community associations in appropriately managing flood loss risk.

Verifying Compliance of Private Flood Insurance Coverage & Access to Mortgage Credit

The joint proposed rule provides appropriate guidance for mortgage originators to determine if a private flood insurance policy provides coverage that is “at least as broad as” coverage offered under a Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP). The proposed rule provides clarity concerning the definition of a flood event, required coverages, permissible exclusions and limitations, and other important matters by explicitly linking these definitions and criteria to those in the SFIP.

Additionally, CAI members support the inclusion of the “assurance clause” that may be written into a policy or attached thereto describing how the underlying policy meets the standards required under the rule. Private insurers can provide this information through disclosure and facilitate lender understanding of the underlying policy. Additionally, such disclosure will assist consumers in verifying their private coverage is “at least as broad as” NFIP coverage.

Verification that a private flood insurance policy fulfills mandatory purchase requirements is of critical importance to community associations. Fannie Mae, Freddie Mac, Federal Housing Administration (FHA), Department of Veterans Affairs (VA), and Department of Agriculture (USDA) project eligibility standards require associations carry appropriate insurance coverage for multiple perils, including flood. If a community association is unable to demonstrate common elements are insured at levels required by these standards the association’s homeowners will have only limited access to mortgage credit.

While this is important for residents of planned communities, it is critical for condominium association homeowners. Condominium associations must submit to regular examinations by federal housing-related agencies to verify compliance with agency standards if residents are to remain eligible for federally-insured or guaranteed mortgages. CAI members expect the “assurance clause” will be sufficient and accepted as evidence of compliance with flood insurance coverage as mandated by rule or guideline of these federal mortgage agencies.

CAI members strongly urge the agencies coordinate with federally-related secondary mortgage market actors to ensure acceptability of private policies that comply with this proposed rule. If Fannie Mae, Freddie Mac, or FHA do not recognize the validity of private flood insurance policies meeting the requirements of this proposed rule, the potential benefits of private flood insurance for community associations will not materialize. Of primary concern, though, is the risk that homeowners living in community associations with private flood insurance policies will not have access to federally-insured or guaranteed mortgage credit.

Private Market Likely to Offer Greater Product Choice & Innovative Products to Associations

In the current marketplace, NFIP is the dominant flood line carrier with a limited number of consumers obtaining excess or specialized (e.g., replacement cost v. cash value for contents) coverage through surplus lines carriers.¹ In most instances, such policies are secondary to NFIP coverage, an arrangement that insulates private capital from covering primary losses. The agencies’ proposed rule will create the regulatory framework to allow greater private first loss coverage.

The market for private flood insurance is developing and certain states have sought to promote private flood insurance. Florida has been a leader in developing a private primary flood insurance market. Despite these efforts, there remains a significant gap between NFIP policies and private flood insurance. One review of the Florida flood insurance market found that of the 1.8 million flood insurance policies currently in force in Florida, approximately 3,000 are private policies.² Despite these data, insurers are moving to take on flood loss risk with numerous carriers now offering primary residential flood insurance coverage.

As more carriers enter the market, it is likely that premiums and coverages will become more competitive, allowing consumers greater product choice. Consumers—including community associations—should have the opportunity to purchase competitively priced private flood insurance that at the very least offers the same coverage as the SFIP. Innovation in the market may lead to improved insurance products for community associations. This is particularly the case for condominium associations, which are currently limited to NFIP’s Residential Condominium Building Association Policy.

¹ Testimony of Brady Kelley before the House Financial Services Committee, Subcommittee on Housing and Insurance, *How to Create a More Robust and Private Flood Insurance Marketplace* (Washington, D.C., January 13, 2016) p. 4.

² Carrns, Ann., *The New York Times*, “How to Assess Private Flood Insurance”, September 7, 2016.

Conclusion

As the agencies have noted, Congress provided specific direction in statute concerning the acceptability of private flood insurance policies in the Biggert Waters Act.³ Additionally, the U.S. House of Representatives unanimously approved H.R. 2901, the “Flood Insurance Market Parity and Modernization Act” on April 28, 2016, further emphasizing the importance of developing a private flood insurance market.⁴

CAI members understand the agencies are striving to implement statutory requirements and the additional views of Congress in this joint proposed rule. Ensuring that private flood insurance policies approved under this proposed rule are accepted by the federal housing related agencies and secondary mortgage market entities is fundamental to this effort. Without this acceptance, community association residents and homeowners will not experience any benefit from a developing private flood insurance market.

CAI members appreciate the diligent effort of your agencies to finalize the proposed rule, which will put in place important consumer protections and foster development of private flood insurance options for homeowners, businesses, and community associations.

Sincerely,

A handwritten signature in black ink, appearing to read 'DM Bauman', with a long horizontal flourish extending to the right.

Dawn M. Bauman, CAE
Senior Vice President, Government and Public Affairs
Community Associations Institute

³ P.L. 112-141

⁴ 114th Congress, U.S. House of Representatives Roll Call No. 177.